HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18876 OF 2007

Between:

Pulipaka Panduranga Venkata Siva and another.

…Petitioners

AND

The Manager,
State Bank of Hyderabad,
SBI & Agril. Banking Division,
Gun Foundry, Hyderabad
and three others.

...Respondents

: O R D E R :

Counsel for the petitioners : Shri B. Venkatadri

Counsel for respondent No.1 : Shri Ch. Ravindra Babu

September 6, 2007

Per G.S.SINGHVI, C.J.

In this petition, the petitioners have prayed for quashing sale proclamation dated 6-7-2007 issued by the Recovery Officer of Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') under Rules 38 and 52(2) of the Second Schedule to the Income Tax Act, 1951 in respect of various properties specified therein.

The aforementioned prayer of the petitioners is founded on the following assertions:

1) that they own agricultural lands in Pinapadu Village, Tenali Taluk, Guntur District;
2) that their brother Pulipaka Siva Satya Vasudeva Sarma and M. Venkata Ramana started a partnership firm in the name and style of Associated Rubber;
3) that they provided financial assistance to the partnership firm and also signed papers for securing loan from the State Bank of Hyderabad (for short, 'the bank');
4) that due to default in repayment of loan, the bank filed O.A.No.472 of 1999 for recovery of Rs.26,86,931.61 with interest at the rate of 18.25% and impleaded them as the non-applicants apart from the firm and its partners;
5) that they did not know about the proceedings of the O.A. and the recovery certificate dated 12-2-2007 till the receipt of the caveat petition filed by the bank in the month of July, 2007;
6) that the proposed sale of agricultural land is ultra vires the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act') and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the 2002 Act');

7) that the children of petitioner No.1 – Pulipaka Panduranga Venkata Siva Subrahmanya Sarma filed O.S.No.216 of 2007 and those of petitioner No.2 – Pulipaka Shiva Rama Krishna Sarma filed O.S.No.218 of 2007 in the Court of Additional Senior Civil Judge, Tenali for partition of land and their respective share in the agricultural lands and the same are pending before the concerned Court;

8) that in the auction conducted by the Recovery Officer on 14-8-2007, Sri Narender Babu offered the highest amount, but his bid was cancelled on 16-8-2007 due to violation of the conditions of auction, and

9) that the bank has arbitrarily chosen their property for auction and no such action is being taken in respect of the properties of respondent Nos.2 to 4, which are situated in urban areas.

In paragraph 9 of his affidavit, petitioner No.2 has averred as under:

> "9. I humbly submit that the 1st petitioner purchased Ac.0.29 cents in Sy.No. or Division Number 214 through a registered sale deed No.2937/92, dt.24-8-1992 and another Ac.0.51 1/6 cents in Sy./D.No.126-3 and 126-4 through registered sale deed no.3729/84, dt.2-8-1984 which is 'B' schedule property in the impugned proclamation of sale dt.6-7-2007. I purchased Ac.0.50 cents in Sy.No./D.No.214 through a registered sale deed No.3534/84 dt.23-7-1984 which is 'C' schedule property in the impugned proclamation of sale issued by the Recovery Officer, DRT, Hyderabad, dt.6-7-2007. The Government of A.P. had also issued title deeds and pattadar pass books in our names. We are regularly cultivating the same lands by raising crops, obtaining crop loans from State Bank of India, Tenali branch through SBI, Kisan Credit Card Pass Book bearing No.101146896062 in the name of 1st petitioner and 101146896040 in my name."

We have heard learned counsel for the parties and scrutinised the pleadings contained in the affidavit of petitioner No.2 and contents of the annexed documents. In our opinion, the writ petition is liable to be dismissed summarily on the ground of availability of statutory

alternative remedy under Section 20 of the 1993 Act, which the petitioners have failed to avail.

A reading of the caveat petition (Ex.P6) shows that the bank had filed O.A.No.1164 of 1996 before Bangalore Bench of the Tribunal, which was, later on, transferred to Hyderabad Bench and re-numbered as O.A.No.472 of 1999. The same was allowed by the Tribunal on 23-1-2007. The recovery certificate was issued on 12-2-2007. Thereafter, the Recovery Officer issued notice of demand and certificate of debts to the parties on 23-3-2007. The order of attachment of immovable property was passed on 17-5-2007 and auction notice was issued on 6-7-2007.

The petitioners have not challenged order dated 23-1-2007 by filing an appeal under Section 20 of the 1993 Act. Therefore, it is not possible to entertain their challenge to the action taken by the bank for recovery of its dues (as on the date of filing of the writ petition a sum of Rs.61,09,262.61 was payable by the borrowers and the guarantors) by ignoring the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner - **A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of**

India Ltd.[14].

In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

Learned counsel for the petitioners could not show that the cause sought to be made out by his clients fall in either of the aforementioned exceptions carved out by the Supreme Court. Therefore, we do not see any reason to allow them to bye-pass the statutory remedy of appeal.

We are further of the view that after having mortgaged their land as security for repayment of loan, the petitioners cannot turn around and question the auction proceedings by invoking Section 31(i) of the 2002 Act, which is not applicable to the recovery proceedings initiated under the 1993 Act.

In the result, the writ petition is dismissed leaving the petitioners free to avail the alternative remedy of appeal under Section 20 of the 1993 Act. They shall also be free to apply for condonation of delay by filing appropriate application under proviso to Section 20(3) of the 1993 Act.

It is also made clear that the observations made in this order

shall not adversely affect adjudication of the appeal, if any filed by the petitioners under Section 20 of the 1993 Act.

As a sequel to dismissal of the writ petition, WPMP.No.24281 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, C.J.

6th September, 2007

C.V. NAGARJUNA REDDY, J.

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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553